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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

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9 IN-N-OUT BURGERS,

10 Plaintiff,

11 v.

12 IN & OUT TIRE & AUTO, INC.,

13 Defendant.

2:07-CV-01556-LRH-LRL

ORDER

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15 Before the court is Plaintiff In-N-Out Burgers' Motion to Set Aside the Magistrate Judge's
16 July 24, 2008, Order Regarding Plaintiff's Motion to Disqualify Counsel (#38¹). The court has
17 reviewed the magistrate's order pursuant to 28 U.S.C. § 636(b)(1)(A) and finds that the order is
18 neither clearly erroneous nor contrary to law.

19 The magistrate's July 24, 2008, order was issued in response to Plaintiff's motion to
20 disqualify Michael Rounds and his law firm Watson Rounds from representing Defendant In & Out
21 Tire & Auto, Inc. in this case. Because the court fully agrees with the magistrate's order, the court
22 need not elaborate at length upon its affirmance. The court will, however, respond to Plaintiff's
23 primary argument in support of its present motion.

24 Plaintiff contends that the magistrate erred by evaluating whether confidential information
25 was actually passed from Robert Lauson, lead counsel for In-N-Out Burger in a prior matter, to
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¹Refers to the court's docket

1 Michael Rounds. Plaintiff's argument is based upon the Nevada Supreme Court's standard for
2 determining whether counsel must be disqualified from representing a client that has interests
3 materially adverse to the interests of a former client. The Nevada Supreme Court explained that a
4 trial court must follow three steps in its inquiry:

5 (1) make a factual determination concerning the scope of the former representation, (2)
6 evaluate whether it is reasonable to infer that the confidential information allegedly given
7 would have been given to a lawyer representing a client in those matters, and (3)
determine whether that information is relevant to the issues raised in the present
litigation.

8 *Waid v. Eighth Judicial Dist. Court*, 119 P.3d 1219, 1223 (Nev. 2005). The court also explained
9 that this inquiry does not require the moving party to divulge any confidential information:

10 [I]n proving that a prior representation is substantially related to present litigation,
11 however, the moving party is not required to divulge the confidences actually
12 communicated, nor should a court inquire into whether an attorney actually acquired
13 confidential information in the prior representation which is related to the current
representation. The court should instead undertake a realistic appraisal of whether
confidences might have been disclosed in the prior matter that will be harmful to the
client in the later matter.

14 *Id.* at 1222-23.

15 Based upon this authority, Plaintiff argues the magistrate erred by undertaking an analysis
16 into whether confidential information was actually imparted to Michael Rounds in the prior
17 matter. On the one hand, Plaintiff is correct that the magistrate discredited Robert Lauson's
18 declaration that he and Michael Rounds discussed certain confidential information regarding In-
19 N-Out Burgers. However, Plaintiff is incorrect that the magistrate's rejection of Lauson's
20 declaration resulted in a "subjective" evaluation of whether confidential information was passed
21 to Michael Rounds. The magistrate denied Plaintiff's motion on the basis that it was not
22 reasonable to infer that the alleged confidential information was imparted to Michael Rounds
23 given Watson Rounds' limited role in the prior matter. Thus, contrary to Plaintiff's assertion, the
24 magistrate's inquiry was an objective one.

25 Finally, the court will address Plaintiff's Request for Judicial Notice (#39). This request is
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1 unnecessary because the materials identified therein are subject to judicial notice without a formal
2 request. The request will therefore be denied as moot.

3 IT IS THEREFORE ORDERED that Plaintiff In-N-Out Burgers' Motion to Set Aside the
4 Magistrate Judge's July 24, 2008, Order Regarding Plaintiff's Motion to Disqualify Counsel (#38)
5 is DENIED.

6 IT IS FURTHER ORDERED that Plaintiff In-N-Out-Burgers' Request for Judicial Notice
7 (#39) is DENIED as moot.

8 IT IS SO ORDERED.

9 DATED this 18th day of February, 2009.



LARRY R. HICKS
UNITED STATES DISTRICT JUDGE